IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4387 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BAHADURSING GHANDUBHA

Versus

STATE OF GUJARAT

Appearance:

MR SB NANAVATI for Petitioner

MR VB GHARANIA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/96

ORAL JUDGEMENT

1. The petitioner, Ex.U.P.C. B.No.3072 of Special Branch in the office of the Commissioner of Police, Ahmedabad city, filed this petition before this court and challenge has been made to the order of the disciplinary authority under which he was ordered to be removed from services and the orders of the appellate authority and the revisional authority under which the aforesaid order has been confirmed.

2. The petitioner was served with a chargesheet and one of the charge was that he was found to be in possession of the stolen property. After holding a departmental inquiry on the charges, a showcause notice was given to the petitioner. The disciplinary authority under its order dated 23rd February, 1976 has given him the penalty of removal from the services. The matter was taken up by the petitioner in appeal to the appellate authority and the same came to be dismissed on 10-12-1977. The matter was then taken up by the petitioner in revision before the Government, but that too has been dismissed on 30th March, 1983. Hence this Special Civil Application.

3. The learned counsel for the petitioner contended that in respect of the charge that the petitioner was found in possession of the stolen property, he was prosecuted in a criminal case in the court of Metropolitan Magistrate no.2, Ahmedabad along with one Ashok alias Munna son of Shivshanker, the Metropolitan Magistrate No.2 under its judgment dated 17th October, 1973 convicted the accused no.2, Ashok alias Munna son of Shivshanker under sec.379, I.P.C.. The petitioner was acquitted for the charge framed under sec.411 of I.P.C. against him on 25th June, 1974. When the petitioner has been acquitted of the charge under sec.411 of I.P.C. by the criminal court then on the same charge, no departmental inquiry could have been held against him. Further contention has been made by the learned counsel for the petitioner challenging the other charges framed against the petitioner, and the petitioner was found guilty of the same.

4. On the other hand, the learned counsel for the respondent contended that in the criminal case, the accused Ashok alias Munna son of Shivshanker was pleaded guilty of the charge and he was convicted under sec.379, I.P.C.. In the criminal case, the muddamal was recovered from the petitioner, but he was acquitted as the learned Judge had not believed the panch witnesses. The counsel for the respondent contended that the acquittal in the criminal prosecution is not a bar to departmental inquiry as possessing the stolen property is a serious misconduct more so when it is a case of employee of police department. It has further been contended that the standard of proof in the criminal proceedings and the departmental inquiries differs as in the former, the guilt of the accused has to be proved beyond reasonable doubt whereas in the latter, the charges can be held to be proved on preponderance of the probabilities. So far

as the other charges are concerned, the counsel for the respondent contended that those charges are rightly been held to be proved and taking into consideration the totality of the facts of this case and seriousness of the misconduct of possessing the stolen property, the penalty of removal was the only appropriate penalty to be given to the petitioner.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The learned counsel for the petitioner does not dispute that the possession of the stolen property by a police employee is a serious misconduct. The petitioner was chargesheeted and one of the charge of possessing the stolen property was framed against him. Possessing stolen property by a police officer is a grave and serious misconduct. It is true that the petitioner was also prosecuted for the offence under sec.411 of I.P.C. and he has been acquitted by the criminal court for the said offence, but I find sufficient merits in the contention of the counsel for the respondent that the standard of proof in the criminal case and the departmental inquiry differs. The standard of proof in the criminal case is to prove the guilt of accused beyond reasonable doubt whereas in a disciplinary proceedings, which is not a criminal trial, the standard of proof is that of preponderance of probabilities. In the case of State of Karnataka vs. T. Venkataramanappa, Civil Appeal No.12312/96 decided on 20th September, 1996, the Hon'ble Supreme Court has held that the acquittal in prosecution for bigamy is not a bar to departmental inquiry for contracting second marriage without the permission of the Government. In that case, the respondent-employee was prosecuted for bigamy an offence punishable under sec.494, I.P.C. in the criminal court and he was acquitted. The departmental inquiry was instituted against the respondent in that case for the misconduct of contracting second marriage without the requisite permission from the Government. The Administrative Tribunal absolved the respondent from facing the departmental inquiry of the charge of contracting second marriage in the presence of one existing with his acknowledged wife.

6. In the present case for the charges under sec.411, I.P.C. the petitioner has been acquitted by the criminal court, but in case the petitioner was found to be in possession of the stolen property, it is grave and serious misconduct and he rendered himself to be befit to be a police employee. The counsel for the petitioner, as stated earlier, does not dispute the possessing of stolen

property by a police employee is a grave and serious misconduct. So the acquittal of the petitioner for the offence punishable under sec.411, I.P.C. may be for the reason that the prosecution has not proved the guilt beyond reasonable doubt will not be a bar to hold the departmental inquiry against him. The prosecution evidence in the criminal case may have fall short of those standard, which does not mean that the department was in any way debarred from invoking the conduct rules and the disciplinary appeal rules against the delinquent employee. The respondent was within its competence and power to hold the departmental inquiry against the petitioner for the charge of possessing of stolen property and on proof of the charge he has rightly been punished with the penalty of removal of services.

7. The counsel for the petitioner has made another contention that the order of the removal of the petitioner from services is bad in law as it has been passed by the authority lower than the appointing authority of the petitioner. This contention raised by the counsel for the petitioner cannot be permitted to raise for the reason that for the first time this contention has been made in the proceedings under Article 226 of the Constitution. This contention was not raised by the petitioner in the departmental inquiry as well as in the first appeal and in the revision. Not only this, but in the writ petition also this contention has not been raised. At this stage, the petitioner cannot be allowed to raise this new contention. Otherwise also, the learned counsel for the petitioner when asked by the court has failed to show how any prejudice has been caused to the petitioner by passing of the order of removal of the petitioner from services by the authority lower than the appointing authority. Last but not the least, the police employee who has indulged himself in the activity of possessing the stolen property cannot be permitted to be reinstated back in the service.

8. The appellate authority and the revisional authority have also confirmed the decision of the disciplinary authority of giving the penalty of removal of the petitioner from the services and no interference is called for in the matter by this court. As the penalty of the removal of the petitioner from services on proof of misconduct of possession of stolen property, is adequate and reasonable and I do not consider it appropriate to go and decide the grounds raised by the petitioner in respect of other charges.

9. In the result, this Special Civil Application

fails and the same is dismissed. Rule discharged.

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